FILED

99585 OCT 4 1999

OFFICE OF THE CLERK

Docket No. _____

THE SUPREME COURT OF THE UNITED STATES

RONALD BRANSON, Petitioner,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President LIMSC; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); SALLY REID, Director DMV, Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RONALD BRANSON
Petitioner, Pro Se
16623 Calahan St.
North Hills CA 91343
(818) 875-4231

September 30, 1999

928

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals willfully and maliciously violated Rule 201(d) of the Federal Rules of Evidence requiring mandatory judicial notice.

2. Whether the judgment is supported by the record.

3. Whether: (a) the amended complaint is the complaint of record before the court, (b) the district court should have taxed costs against petitioner, and (c) sanctions should have been imposed against petitioner.

4. Whether petitioner is entitled to declaratory relief, together with the injunctive relief as sought.

5. Whether petitioner is entitled to summary judgment in his favor as a matter of law.

* * *

LIST OF PARTIES/PARENT COMPANIES

1. All parties are listed in the caption.

2. Respondent Lockheed Martin IMS Corporation stated in their Opposition to Petition for (§1257) Certiorari, Docket No. 97-6658, as follows:

> Pursuant to Rule 29 of this Court, Respondent Lockheed Information Management Services Company ("Lockheed IMS") respectfully lists the following information:
>
> (i) Lockheed IMS is a New York corporation, and, is now known as Lockheed Martin IMS Corporation.
>
> (ii) Lockheed Martin IMS Corporation is a wholly owned subsidiary of its parent company, Lockheed Martin Corporation.
>
> (iii) Lockheed IMS has no subsidiaries.

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* * *

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS

The opinions and orders in this case are not published.

STATEMENT OF JURISDICTION

a) The judgment sought to be reviewed was entered (filed) June 17, 1999.

b) Rehearing was denied July 22, 1999.

c) The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment and orders in question is Title 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

(pertinent texts set forth in Appendix)

Constitutional Provisions:

First Amendment

Due Process Clause of the Fourteenth Amendment

Federal Statutes:

28 U.S.C. §1254(1)

28 U.S.C. §1331

28 U.S.C. §1343(a)(3)

28 U.S.C. §2201(a)

42 U.S.C. §1983

Federal Rules:
Federal Rules of Civil Procedure:
Rule 11
Rule 15(a)
Federal Rules of Evidence:
Rule 201(d)

State Statutes:
California Code of Civil Procedure:
Section 904.1(a)(1)
Section 906

California Rules of Court (Appellate Rules):
Rule 2(a)(2)
Rule 2(d)

STATEMENT OF THE CASE

Review of a judgment of a United States Court of Appeals is sought by this petition. The basis for federal jurisdiction in the district court is original jurisdiction invoked under Title 28 U.S.C. §1343(a)(3) as well as §1331, federal question jurisdiction.

This original jurisdiction in district court was invoked for prospective injunctive relief under Title 42 U.S.C. §1983 against state judicial officers responsible for depriving petitioner of a state court remedy by the process of law due under California Code of Civil Procedure §906, where, although the state law on the books is adequate, that law was not implemented by the state officials assigned to do so. In such a situation, this Court has ruled that §1983 is to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice. (See *Monroe v.*

Pape (1961) 365 U.S. 167, 174; also *Zinermon v. Burch* (1990) 494 U.S. 113, 125).

However, a federal remedy has not been provided. Both lower courts have refused to acknowledge and address the process of law that was due petitioner in state court under California Code of Civil Procedure §906. Without federal court addressing that core issue, its function in providing a federal remedy where the state remedy was not available in practice is not being performed as this Court has ruled is to be done under federal statute as aforesaid. Not only has the district court violated its responsibility under §1983, the Court of Appeals has affirmed that conduct and itself violated the law, to wit, Rule 201(d) of the Federal Rules of Evidence when, after being informed of the violation, it nevertheless maliciously refused to take mandatory judicial notice of material facts and information from the complaints as required to do under the rule when petitioner requested such notice be taken.

Rule 10(a) of this Court provides that when a United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, such conduct calls for an exercise of this Court's supervisory power.

The first question: In this case, the Ninth Circuit has departed from a required course of judicial proceedings by willfully and maliciously refusing to following Rule 201(d) of the Federal Rules of Evidence, the first question presented here. Petitioner requested the court take judicial notice of facts taken from both complaints, of the relief sought, and of the prayer of both complaints. The material was quoted verbatim and their precise location in the record was given. Rule 201(d)

provides that where a party requests judicial notice of information and that information is supplied, such notice is mandatory. Petitioner brought the omission to the court's attention in his petition for rehearing, and rather than correct that "mistake" (if it was a mistake), the court "voted" to deny the petition, showing that it wasn't any mistake.

The second question: As a result of the court's refusing to take mandatory judicial notice of material facts and substantive law alleged in the complaint, it thereby refused to take the required notice of the subject matter of this action and further abused its refusal by coming up with a theory alien to the facts of the complaint, falsely concluding that the district court lacked subject matter jurisdiction. Because the theory used (attacking a prior state court judgment) is not shown by the complaints to be possible, as there does not exist a prior state court judgment based on the substantive law claimed, the court was unable to support its conclusion by the record, and did not attempt or pretend to do so.

The third question: By making that false and unsupported ruling, the Court of Appeals knocked out petitioner's first amended complaint under the guise of futility of amendment; further, the court affirmed the district court's taxing of costs against petitioner, as well as imposing sanctions sua sponte against petitioner under the guise of "frivolous action," even though stating in the judgment that it may affirm the district court on any basis ***supported by the record.*** In affirming sanctions sua sponte by the lower court, the Court of Appeals referenced Rule 11 F.R.Civ.P. In so doing, the Court of Appeals has sanctioned the violation of that Rule by the district court. The record shows that the

district court failed to follow the requirements of Rule 11 when ordering sanctions on its own initiative, the appellate court affirming that omissive conduct.

The fourth question: Petitioner also sought declaratory relief regarding his constitutional rights under California Vehicle Code sections 40200 through 40230. The question raised by this constitutional challenge is part of the material of which mandatory judicial notice was to have been taken. Petitioner challenged the statutory scheme as not providing for a hearing on liability before imposing a penalty, nor providing pre-deprivation notice as required by due process standards. That question was not addressed in state court, and because of the absence of the statutory state appeal that was due, the challenge was killed in state court. By the unsupported judgment, petitioner is deprived of the declaratory relief sought as well as the injunctive relief.

The fifth question: The record shows that the material facts of the complaint and the substantive law claimed by petitioner in the federal action have not been addressed by the parties nor by the courts. In fact the record shows that the Court of Appeals has gone out of its way to evade those material facts and substantive law by refusing to take judicial notice of that information in violation of the federal rules!

Since the record reflects that there is no genuine issue as to any ***material fact***, petitioner is entitled to summary judgment in his favor as a matter of law.

ARGUMENT

1. Whether the Court of Appeals willfully and maliciously violated Rule 201(d) of the Federal Rules of Evidence requiring mandatory judicial notice.

Rule 201(d) F.R.E. provides:

> (d) **When mandatory** – A court shall take judicial notice if requested by a party and supplied with the necessary information.

In the final brief of the appeal **[A-48]**, petitioner, as plaintiff and appellant, requested the court take judicial notice of: (A) Facts from the complaint (both original and amended) **[A-49 thru -53]**; (B) the Relief Sought in both original and amended complaints **[A-53 & -54]**; and (C) the Prayer in both the original and amended complaints. **[A-54 & -55].** Each item of which petitioner requested judicial notice is quoted verbatim, citing the precise location where that necessary information appears in the record. **[A-49 thru -55]**.

The judgment states: "We deny Branson's requests for judicial notice...", without offering an explanation for not carrying out their mandatory duty. **[A-3]**.

In the opening statement of the petition for rehearing **[A-65]**, petitioner brought to the attention of the court that the judicial notice, as requested, is ***mandatory,*** citing Rule 201(d) F.R.E. The panel responsible for obeying Rule 201(d) responded by arbitrarily "vot[ing] to deny" the petition **[A-8]**, evidencing intentional and deliberate disregard of law, which effectively is the intentional and deliberate disregard of the subject matter of this action framed by the complaint, thus maliciously closing out access to the court for redress of petitioner's grievances.

2. Whether the judgment is supported by the record.

After willfully and maliciously violating Rule 201(d), as aforesaid, the panel ruled:

> We may affirm the district court's decision on any basis which the record supports. *See Branson v. Nott,* 62 F.3d 287, 291 (9th Cir.1995). Because Branson's action is an impermissible collateral attack against a prior state court judgment, the district court lacked subject matter jurisdiction and properly dismissed his section 1983 action. *See id.* at 291-92. **[A-2]**.

A. <u>The face of the judgment is entirely devoid of any showing of support from the record.</u>

After deliberately disregarding the subject matter of this action as framed by the complaint, in ruling on this appeal, the panel, out of thin air, interprets the subject matter before the court as "an impermissible collateral attack against a prior state court judgment"**[A-2]** without showing a scintilla of support from the record evidencing the truth of that premise-- even though prefacing it with "We may affirm the district court's decision on any basis which the record supports." The record supporting the instant case is **not** *"Branson v. Nott"* which is an unrelated case. If anything, *Branson v. Nott* supports the converse, *i.e.,* "We may not affirm the district court's decision on any basis which the record does not support." What the evidence <u>does</u> show is, not the exercise of judicial discretion, but a willful, malicious judicial revolt against plain law!

B. <u>The face of the complaint shows that the judgment *cannot* be supported by the record.</u>

The information of which the court refused to take the required judicial notice **[A-3]** establishes the subject

matter of this action. Had the judges followed Rule 201(d) of the Federal Rules of Evidence, they could have properly interpreted the subject matter of this action as supported by the record and, based thereon, found that the district court does, as a matter of law, have subject matter jurisdiction in this case.

By refusing to obey Rule 201(d), the judges deliberately disregarded the material points of fact and law set forth in the complaint (both original and amended) **[A-65 thru -68]** which frame the subject matter before the court.

Furthermore, prior to the judgment, petitioner placed the Court of Appeals on notice as follows **[A-48]**:

> TO: THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT...
>
> **PLEASE TAKE NOTICE** that as of the time of filing of the City's Brief ("CB") to which this Reply is made, there is not so much as a single argument or mention of the controlling law of this case, namely, the denial of due process to the right of an appeal under California Code of Civil Procedure §906, nary a word throughout the CB or any of the previous appellees' briefs. THAT WITHOUT CONSIDERATION OF CCP §906 AND THE PROCESS DUE THEREUNDER, IT IS IMPOSSIBLE FOR THIS CASE TO BE RESOLVED. This federal suit is based on the controlling Rule of Law.

The Court of Appeals was *legally on notice* that the subject matter of this case is based on section 906 of the California Code of Civil Procedure, the substantive law on which this federal claim is based and clearly stated

on the face of the complaint. There is no evidence on the record showing any prior state court judgment relating to the process due under CCP §906. The record indicates therefore that it is an impossibility for petitioner to have attacked a prior state court judgment, as one does not exist relevant to the subject matter of this action.

3. Whether: (a) the amended complaint [A-36] is the complaint of record before the court as a matter of law, (b) the district court should have taxed costs against petitioner, and (c) sanctions should have been imposed against petitioner.

All three of the above sub-issues ride on the false premise that petitioner collaterally attacked a prior state court judgment, and false conclusion that the district court lacked subject matter jurisdiction, both shown by the record to be false herein.

Before petitioner can be held legally responsible for any monies involved (subparagraphs B and C below), the validity of the judgment **[A-1 thru -4]** must first be determined by this Court, or some other judicial tribunal before whom this issue may come. Determination by this Court, based on the evidence, will put the matter to rest at this time, avoiding the probability of costly, time-consuming future litigation.

A. Based on the evidence of record, amendment of the complaint is not futile.

Regarding amendment, the judgment states **[A-3]**:

> Moreover, the district court did not err by denying Branson leave to amend his complaint because amendment would be futile given the district court's ***lack of subject matter jurisdiction.*** [Emph. added] (citation omitted)

The "district court's lack of subject matter jurisdiction" is **not** a "given," since the appellate judges falsely interpreted the subject matter of this action by refusing to take the required judicial notice of material portions of both complaints which establish the actual subject matter hereof. (Arguments 1,2).

Accordingly, based on the evidence of record, amendment would not be futile, and the First Amended Complaint **[A-36 thru -47]** is the proper complaint of record before the court as a matter of law. (Rule 15(a) F.R. Civ.P.) *See Schreiber Distributing v. Serv-Well Furn. Co.* (9th Cir.1986) 806 F.2d 1393, 1401.

B. Costs should not have been taxed against petitioner.

Regarding taxing of costs, the judgment states **[A-3]**:

> We further conclude that the district court did not err by taxing costs against Branson because 28 U.S.C. §1919 authorizes payment of just costs in an action dismissed for ***lack of jurisdiction.*** [Emph. added] (citation omitted)

Title 28 section 1919 does not apply, since the record establishes that the district court **does** have jurisdiction, as aforesaid. (Argument 2).

Accordingly, based on the record, costs could not be legally taxed against petitioner, and, knowing this, any attempted exaction of monies from petitioner for costs would not only be a civil wrong, but also a criminal act of extortion.

C. Sanctions should not have been imposed against petitioner.

Regarding sanctions against petitioner, the judgment states **[A-3]**:

> Moreover, because ***the record indicates that Branson's action was a frivolous and imper-***

> ***missible collateral attack against a prior state court judgment,*** the district court properly imposed sanctions sua sponte against Branson. [Emph. added] *See* Fed.R.Civ.P. 11.

As shown in Argument 2, *ante*, it is impossible for petitioner to have attacked a prior state court judgment according to the evidence on record in this case.

Moreover, in referring to Rule 11 in the judgment and stating "the district court properly imposed sanctions sua sponte against Branson", the Court of Appeals has "sanctioned [the] departure from the accepted and usual course of judicial proceedings by a lower court" which is yet another compelling reason for the granting of this petition "to call for an exercise of this Court's supervisory power." (Supreme Ct. Rule 10(a)). In imposing monetary sanctions sua sponte, the district court failed to comply with F.R.Civ.P. Rule 11 (c)(1)(B), (c)(2)(B), and (c)(3) requiring the court to issue an order to show cause and provide a description of the conduct determined to violate the rule, and explain the basis for the sanction imposed. **[A-11].** Neither the district court (*i.e.*, the Chief Judge) nor the Court of Appeals has seen fit to have the court's responsibilities under Rule 11 obeyed. This failure of duty is yet another judicial disregard for clear law!

Furthermore, no evidence is shown that this action was frivolous. The court fails to show how Rule 11 applies to the circumstances here. No discussion of the facts or law of this case is made. The test for Rule 11 sanctions in the Ninth Circuit is described as follows:

> The pleader, at a minimum, must have a "good faith argument" for his or her view of what the law is, or should be. A good faith belief in the merit of a legal argument is an objective condi-

> tion which a competent attorney attains only after "reasonable inquiry." Such inquiry is that amount of examination into the facts and legal research which is reasonable under the circumstances of the case. [T]he conclusion drawn from the research undertaken must itself be defensible. *Zaldivar v. City of Los Angeles* (9th Cir.1986) 780 F.2d 823, 831.

The panel here fails to discuss any "examination into the facts and legal research" nor did it consider any of the "circumstances of the case." Quite the contrary, the judges maliciously *refused to do so* by denying judicial notice of information showing the "facts and legal research" and "circumstances of this case," even to the extent of violating federal rules. See Argument 1, *ante.*

Accordingly, the record indicates no basis for sanctions against petitioner, and, knowing this, any attempted collection of monies, or otherwise, from petitioner for sanctions would not only be a civil wrong, but a criminal act of extortion as well.

Because of the serious contingencies resting upon the judgment, it is compelling that this Court establish the validity of the judgment according to the record of this case. The Court of Appeals panel failed to do so by (1) refusing to take mandatory judicial notice of material facts and law establishing the subject matter of this action, and then (2) refusing to correct its failure by maliciously denying rehearing.

As this case stands right now, sanctions and costs against petitioner are not justified under law; a currently pending post-judgment motion for Rule 38 FRAP sanctions may shed future light on this issue. Petitioner reserves his right to file a supplemental brief, if

necessary, upon receiving a decision on that motion. [Rule 15.8]

4. Whether petitioner is entitled to declaratory relief.

Another result of the bogus judgment of the Court of Appeals is the closing out of any possibility of the declaratory relief sought by petitioner, as well as the injunctive relief.

> Recently, the Supreme Court has reiterated its position: "[i]t is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14, 103 S.Ct. 2890. 2899 n.14, 44 L.Ed.2d 490 (1983) (citing *Young*, 209 U.S. at 160-62, 28 S.Ct. at 454-55.) Commentators observe: "[t]he best explanation of Ex parte Young and its progeny is that the Supremacy Clause creates an implied right of action for injunctive relief against state officers who are threatening to violate the federal Constitution or laws." 13B C.Wright, A.Miller, E.Cooper, *Federal Practice and Procedure* §3566, at 102 (1984). They also observe that *Shaw* "leaves open the possibility that federal jurisdiction exists if an injunctive relief is sought against state officers to restrain enforcement of a state statute, but that it would not exist if only a declaratory judgment were sought." *Id.* 463 U.S. at 103, 103 S.Ct. at 2903.
>
> *Guaranty Nat. Ins. Co. v. Gates* (9th Cir.1990) 916 F.2d 508, 511-12.

In the instant case, all of the rights mentioned in *Guaranty* were "flushed down the tubes" and don't

amount to a hill of beans simply because the Ninth Circuit here, by "the stroke of a pen", decided to evade the subject matter raised by petitioner in this action, slamming the door on his rights by making a ruling they could not support by the record—and didn't care!

According to law and the facts of this case, petitioner is entitled to declaratory relief as well as injunctive relief in federal court. The violation of law by the court should not stand in the way.

*5. **Whether petitioner is entitled to summary judgment in his favor as a matter of law.***

Based on the evidence showing (a) that the subject matter of this action is violation of the process due in state court under California Code of Civil Procedure section 906 for which petitioner is entitled to federal relief, and (b) that there does not exist a "prior state court judgment" relevant to that process of state law, petitioner is entitled to summary judgment in his favor as a matter of law.

As stated in *Carter v. Stanton* (1972) 405 U.S. 669, 671, "Under Rule 56, summary judgment cannot be granted unless there is no genuine issue as to any material fact....". The judges ruling on this appeal refused to take judicial notice of the material facts. (See Argument 1, *ante.*) As the evidence shows, the theory of collaterally attacking a prior state court judgment is mutually exclusive from, and totally alien to, the material facts of record in both complaints. The judges had to maliciously turn their backs on the material facts of this case in order to draw a conclusion which they were unwilling and unable to support from the record.

Regarding material facts, the landmark case of *Anderson v. Liberty Lobby, Inc.* (1986) 477 U.S. 242

states at page 248 "[a]s to materiality, the substantive law will identify which facts are material." The Ninth Circuit ruled:

> Material facts are those necessary to the proof or defense of a claim, and are determined by reference to the substantive law. (See *Anderson v. Liberty Lobby, ...*). *Nat. American Ins. Co. of Cal. v. Underwriters* (9th Cir.1996) 93 F.3d 529, 533.

By refusing to take judicial notice of information from the complaint requested by petitioner, the panel ruling on this appeal willfully disregarded the substantive law claimed by petitioner in this action. As the record shows, that substantive law is California Code of Civil Procedure section 906. Any facts relating to a "collateral attack of a prior state court judgment" are ***not material*** to the substantive law of this federal claim. The record clearly shows that there is no genuine issue ***as to any material fact***, and that petitioner is entitled to summary judgment in his favor as a matter of law, that is, if law has any meaning.

* * *

CONCLUSION

The proper disposition of this case depends upon the record. Until the court provides a ruling that is ***supported by the record,*** this case stands undecided as a matter of law; and petitioner cannot be held legally or morally responsible for anything resulting from a whimsical ruling unsupported by the evidence.

Bringing this case to a lawful conclusion is a compelling reason for granting this petition, so that the court does not suffer from public exposure and the disgrace of this racket.

Dated: Sept. 30, 1999

Ronald Branson

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APPENDIX

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JUDGMENT SOUGHT TO BE REVIEWED

FILED
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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant-
Cross-Appellee,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES; SALLY REID, Director DMV,
Defendants-Appellees,

and

LOCKHEED MARTIN IMS CORPORATION, (LIMSC); EDWARD AVILA, Western Region Senior Vice President (LIMSC),
Defendants-Appellees-
Cross-Appellants.

Nos. 98-56530, 98-56685

D.C.No. CV-98-00778-TJH

MEMORANDUM[1]

Appeals from the United States District Court
for the Central District of California
Terry J. Hatter, Chief Judge, Presiding

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

Submitted June 14, 1999[2]

Before: O'SCANNLAIN, RYMER, and SILVERMAN, Circuit Judges.

Ronald Branson appeals pro se from the district court's dismissal of his 42 U.S.C. § 1983 action, its denial of his motion to alter or amend the judgment and for leave to amend, and its imposition of sanctions and costs against him. Lockheed Martin IMS Corporation and Edward Avila cross-appeal from the district court's denial of their request for attorney's fees pursuant to 42 U.S.C. § 1988. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm both the appeal and cross-appeal.

We may affirm the district court's decision on any basis which the record supports. *See Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995). Because Branson's action is an impermissible collateral attack against a prior state court judgment, the district court lacked subject matter jurisdiction and properly dismissed his section 1983 action. *See id.* at 291-92.

Because the record shows no newly-discovered evidence, clear error or manifest injustice, or an intervening change in controlling law, the district court properly denied Branson's Fed.R.Civ.P. 59(e) motion. *See School Dist. No. 1J, Multnomah County v. AcandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993).

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[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed.R.App.P. 34(a)(2). Accordingly, Lockheed's and Avila's request for oral argument is denied.

Moreover, the district court did not err by denying Branson leave to amend his complaint because amendment would be futile given the district court's lack of subject matter jurisdiction. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996).

We further conclude that the district court did not err by taxing costs against Branson because 28 U.S.C. §1919 authorizes payment of just costs in an action dismissed for lack of jurisdiction. *See Branson*, 62 F.3d at 293 n.10. Moreover, because the record indicates that Branson's action was a frivolous and impermissible collateral attack against a prior state court judgment, the district court properly imposed sanctions sua sponte against Branson. *See* Fed.R.Civ.P. 11.

We deny California Department of Motor Vehicles' and Reid's request for attorney's fees and costs without prejudice to their requesting such an award of fees and costs in a separately filed motion. *See Gabor v. Frazier*, 78 F.3d 459, 459-60 (9th Cir. 1996)(order).

We deny Branson's requests for judicial notice, striking of portions of certain briefs, and sanctions.[3]

Finally, as to Lockheed's and Avila's cross-appeal, we conclude that the district court properly denied their request for attorney's fees under 42 U.S.C.§

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[3] Branson's remaining contentions lack merit.

1988 because there is no prevailing party in an action dismissed for lack of subject matter jurisdiction. *See Branson*, 62 F.3d at 293.[4]

Branson shall pay costs on his appeal. Lockheed and Avila shall pay costs on their cross-appeal.

No. 98-56530 (Main Appeal) AFFIRMED.

No. 98-56695 (Cross-Appeal) AFFIRMED.

---

[4] Lockheed and Avila contend that *Elks Nat'l Found. v. Weber*, 942 F.2d 1480, 1485 (9th Cir. 1991), permits the award of attorney's fees under 42 U.S.C. § 1988 when an action is dismissed for lack of subject matter jurisdiction. This court in *Branson* distinguished *Elks National Foundation* because in the latter case the award of attorney's fees was based alternatively on Fed.R.Civ. P. 11, which permits the award of attorney's fees when an action is dismissed for lack of subject matter jurisdiction. *See Branson*, 62 F.3d at 293. Here, no Fed.R.Civ.P. 11 motion was filed, so the district court had no basis to award Lockheed and Avila attorney's fees.

---4---

ORDER OF DISMISSAL (District Court)

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

FILED
CLERK, U.S. DIST. CT.
MAY 12 1998
CENTRAL DIST. OF CALIF.
BY DEPUTY

ENTERED
CLERK, U.S. DIST. CT.
MAY 14 1998
CENTRAL DIST. OF CALIF.
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RONALD BRANSON, Plaintiff,

v.

CITY OF LOS ANGELES, *et al.*, Defendants.

CV 98-0778 TJH (AJWx)

ORDER

The Court has considered the motions of the City of Los Angeles, Los Angeles Department of Transportation, Thomas Connor, Lockheed Martin IMS Corporation, Edward Avila, California Department of Motor Vehicles, and Sally Reid to dismiss, together with moving and opposing papers.

It is Ordered that the motions to dismiss be, and hereby are, **Granted** with prejudice.

Date: May 7, 1998 /s/

Terry J. Hatter, Jr.
Chief United States District Judge

ORDER DENYING 59(e) MOTION
(District Court)

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

FILED
CLERK, U.S. DIST. CT.
AUG -6 1998
CENTRAL DIST. OF CALIF.
BY DEPUTY

ENTERED
CLERK, U.S. DIST. CT.
AUG 10 1998
CENTRAL DIST. OF CALIF.
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RONALD BRANSON,
Plaintiff,

v.

CITY OF LOS ANGELES, *et al.*,
Defendants.

CV 98-778 TJH (AJWx)

ORDER

The Court has considered Plaintiff's motion to alter or amend judgment, Plaintiff's request to file a first amended complaint, Defendant Lockheed Martin IMS Corp.'s motion for attorney's fees, and Plaintiff's motion to take Defendant Lockheed Martin IMS Corp.'s motion for attorney's fees off calendar, together with the respective moving and opposing papers.

It is Ordered that Plaintiff's motion to alter or amend judgment be, and hereby is, **Denied.**

---1---

It is further Ordered that Plaintiff's request for leave to file a first amended complaint be, and hereby is, **Denied.**

It is further Ordered that Plaintiff's motion to take Defendant Lockheed Martin IMS Corp.'s motion for attorney's fees off calendar be, and hereby is, **Denied.**

It is further Ordered that Defendant Lockheed Martin IMS Corp.'s motion for attorney's fees be, and hereby is, **Denied.**

It is further Ordered, *sua sponte,* that Plaintiff be sanctioned in the amount of $1,000.00 for filing this frivolous action, and Plaintiff shall pay the sanction to the Clerk of the Court on or before September 21, 1998.

Date: August 5, 1998

/s/_____

Terry J. Hatter, Jr.

Chief United States District Judge

----------2----------

DENIAL OF REHEARING

FILED
JUL 22 1999
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant-
Cross-Appellee,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNOR, General Manager LADOT; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES; SALLY REID, Director DMV,
Defendants-Appellees,

and

LOCKHEED MARTIN IMS CORPORATION, (LIMSC); EDWARD AVILA, Western Region Senior Vice President (LIMSC),
Defendants-Appellees-
Cross-Appellants.

Nos. 98-56530, 98-56685

DC# CV-98-00778-TJH
Central California
(Los Angeles)

ORDER

Before: O'SCANNLAIN, RYMER and SILVERMAN, Circuit Judges

The panel has voted to deny appellant's petition for panel rehearing.

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

U.S. Constitution:

First Amendment (Petition Clause): Congress shall make no law...abridging the...right of the people...to petition the Government for a redress of grievances.

Fourteenth Amendment (Due Process Clause): ...[N]or shall any state deprive any person of life, liberty, or property, without due process of law;....

Federal Statutes:

28 U.S.C. §1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: ¶(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. §1331: Federal question – The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1343(a)(3): (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ...(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

28 U.S.C. §2201(a) (pertinent part): In a case of actual controversy within its jurisdiction,... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought....

42 U.S.C. §1983 (pertinent part): Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of any right, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress....

Federal Rules of Civil Procedure:

Rule 11 (pertinent portions): Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions. ...

(b) Representations to Court – By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the exten-

sion, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions - If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) (B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanctions imposed.

Rule 15(a) (pertinent part): Amendments – A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served ....

Federal Rules of Evidence:

Rule 201(d): When mandatory – A court shall take judicial notice if requested by a party and supplied with the necessary information.

California Code of Civil Procedure:

§904.1(a)(1) (pertinent part): Appeal From Superior Court - An appeal may be taken from a superior court in the following cases: (a) From a judgment, except (1) an interlocutory judgment, ...

§906 (pertinent part): Powers of Reviewing Court – Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party,....

California Rules of Court (Appellate Rules):

Rule 2(a)(2): Time of Filing Notice of Appeal – (a) [Normal time] Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: ... (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal, ...

Rule 2(d): [Appealable order] As used in subdivisions (a) and (c) of this rule, "judgment" means "appealable order" if the appeal is from an appealable order.

* * *

ORIGINAL COMPLAINT

RONALD BRANSON
10853 White Oak Ave.
Granada Hills, Calif. 91344
(626) 446-8356
Plaintiff, Pro Se

FILED
98 FEB -2 AM 11:03
CLERK, U.S. DIST. CT.
CENTRAL DIST. OF CALIF
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD BRANSON,
Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President LIMSC; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); and SALLY REID, Director DMV,
Defendants.

No. 98-0778 TJH (AJWx)

COMPLAINT FOR PROSPECTIVE INJUNCTIVE RELIEF (LACK OF STATE COURT REMEDY)

[Title 42 U.S.C. §1983]
"*Parratt*" violation

Plaintiff alleges:

PARTIES

1. At all times herein mentioned, plaintiff was, and now is, a resident of the State of California, County

of Los Angeles, within the venue and jurisdiction of the Central District of California, and a natural born citizen of the United States.

---

2. Defendant CITY OF LOS ANGELES ("CITY") is, and at all relevant times was, a municipal corporation duly organized and existing by virtue of its Charter, Code, Ordinances, Rules and Regulations, authorized by the California Constitution and County of Los Angeles, and at all relevant times in the underlying state action was not acting as an independent municipal entity but rather strictly as a statutory delegate and issuing agency of co-defendant CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ("DMV") under the express authority of the California Vehicle Code.

3. Defendant LOS ANGELES DEPARTMENT OF TRANSPORTATION ("LADOT") is, and at all relevant times in the underlying state action was, a component department of co-defendant CITY created to function as and to provide a single CITY government focal point for the operation of the CITY's ground transportation activities. LADOT, in implementing the CITY's parking enforcement activities, entered into a contract with co-defendant LOCKHEED MARTIN IMS CORPORATION ("LIMSC"), formerly known as "Lockheed Information Management Services Company," to operate the CITY's "Parking Violations Bureau."

4. Defendant THOMAS CONNER is the current General Manager of co-defendant LADOT, replacing Robert R. Yates formerly in said position at the time of the underlying state action, who is responsible for the

enforcement of parking regulations on behalf of co-defendant CITY.

5. Defendant LOCKHEED MARTIN IMS CORPORATION ("LIMSC"), formerly known as "Lockheed Information Management Services Company", as aforesaid, is a New York corporation and wholly owned subsidiary of its parent company, Lockheed Martin Corporation, and a private vendor engaged in the business of processing parking citations in the name of co-defendant CITY by operating under contract the CITY's "Parking Violations Bureau."

6. Defendant EDWARD AVILA is the current Western Region Senior Vice President of co-defendant LIMSC, replacing Matthew Silverman formerly in said position

at the time of the underlying state action, having general responsibility for, and oversight of, the activities of said "Parking Violations Bureau" of co-defendant CITY.

7. Defendant CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ("DMV") is, and at all relevant times in the underlying state action was, a component department within the Government of the State of California under the Business, Transportation and Housing Agency, and the principal entity administering and enforcing provisions of the California Vehicle Code, delegating its statutory authority to co-defendant CITY for implementation within its local jurisdiction as provided by said Code, and operating under the direction and control of the Director of Motor Vehicles.

8. Defendant SALLY REID is the current Director of Motor Vehicles, replacing Frank S. Zolin formerly holding that position at the time of the underlying state action, having statutory control over the

operations of co-defendant DMV and charged with the responsibility of the administration and enforcement of the provisions of the California Vehicle Code and all other laws regulating the function of co-defendant DMV.

RELIEF SOUGHT

9. Plaintiff seeks prospective injunctive relief in federal court under Title 42 U.S.C. §1983 due to the deprivation of a state court remedy without due process of law in his underlying state tort action, Los Angeles Superior Court case number BC118804, after exhausting all possible state legal remedies through the §1257 appeal sought in the U.S. Supreme Court, No. 97-6658. The state court system (1) failed to adjudicate plaintiff's constitutional challenge of California Vehicle Code sections 40200 through 40230; (2) failed to provide an appeal to which plaintiff was constitutionally entitled according to the subject matter of his notice of appeal filed October 19, 1995; and (3) thus failed to provide constitutional access to state court for redress of plaintiff's grievances.

----------3----------

JURISDICTION

10. Plaintiff invokes original jurisdiction of the federal District Court under Title 28 U.S.C. §1343(a)(3), as well as §1331 federal-question jurisdiction.

BACKGROUND

11. On December 27, 1994, plaintiff filed a state tort action against the defendants. (Exhibit A - face sheet of state complaint identifying the action).

12. In the underlying state complaint, plaintiff challenged the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to plaintiff, as well as any laws, codes, rules and

regulations in reliance thereon. A copy of that challenge as presented in the underlying state action is attached hereto as Exhibit B.

13. On October 19, 1995, plaintiff filed a notice of appeal from two orders in said tort action. (Exhibit C showing the subject matter for appeal as ***two orders*** in said action).

14. Under California law, the process due plaintiff for an appeal from the two orders indicated in the notice of appeal is established by California Code of Civil Procedure ("CCP") section 906 which provides that upon invoking an appeal from a final order pursuant to section 904.1, the appellate court will review the interlocutory order included in the notice of appeal as well as the final order. A copy of CCP sections 904.1 and 906 is attached as Exhibit D for reference.

15. The notice of appeal (Exhibit C) indicates that the intermediate (interlocutory) order was filed March 17, 1995, and the final order was filed August 24, 1995.

16. Under the one final judgment rule, universally recognized in every state, including California, the final order of August 24, 1995 is the only appealable order in plaintiff's underlying state tort action, No. BC118804, from which an appeal could be taken under CCP section 904.1.

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17. Plaintiff, having noticed the appeal from the final order under CCP section 904.1, is statutorily and constitutionally entitled to appellate review of the intermediate order under CCP section 906 "upon [the] appeal pursuant to section 904.1." (Exhibit D).

18. A notice of entry of judgment was served on August 29, 1995 by a party to the underlying action

upon plaintiff. (Exhibit E identifying the document and service).

19. The notice of appeal (Exhibit C) was filed by plaintiff October 19, 1995.

20. The timeliness of the notice of appeal is governed by Rule 2(a) California Rules of Court which provides "Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment. ... " A copy of Rule 2(a) CRC is attached as Exhibit F for reference.

21. The word "judgment" used in Rule 2(a) means "appealable order" as provided by Rule 2(d) CRC, a copy of which is included in Exhibit F for reference.

22. In plaintiff's underlying state action, the word "judgment" in Rule 2(a) means the order filed August 24, 1995, the only "appealable order" in case number BC118804.

23. Under the facts of plaintiff's underlying state action, the applicable portion of Rule 2(a), quoted above, determining the timeliness of plaintiff's notice of appeal is sub-part (2), "on or before 60 days after the date of service of... 'notice of entry' of judgment by any party upon the party filing the notice of appeal." (Exhibit F).

24. The notice of entry of judgment was served by a party upon plaintiff on August 29, 1995 (Exhibit

E), and plaintiff filed the notice of appeal on October 19, 1995 (Exhibit C), "before 60 days (51 days) after the date of service of notice of entry of judgment."

25. The notice of appeal (Exhibit C) was timely filed under Rule 2(a) sub-part (2) of the California Rules of Court. (Exhibit F).

----------5----------

26. No appeal on the subject matter of the notice of appeal (Exhibit C) under Code of Civil Procedure section 906 (Exhibit D) was ever afforded plaintiff in state court at any time, or at any level.

27. No adjudication of the constitutional challenge of Vehicle Code sections 40200 through 40230, presented in the complaint at the inception of the state tort action (Exhibit B), was made by state court at any time, at any level.

28. No access to state court for redress of plaintiff's grievances as presented in the underlying independent tort action was given by state court at any time, at any level.

VIOLATIONS REQUIRING FEDERAL INJUNCTIVE RELIEF

Count I

29. On December 27, 1994, plaintiff filed a post-deprivation tort action at law in state court, independently from outside the administrative forum, challenging the constitutionality of California Vehicle Code sections 40200 through 40230, claiming the procedures promulgated under said statutory scheme are the very source of the alleged tort injuries for which plaintiff was seeking an independent judicial remedy in state court.

30. That no state court at any level has adjudicated this independent constitutional challenge, leaving the question undecided to date, said omission depriving plaintiff of a constitutionally protected interest in life, liberty, and property, without due process of law, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Count II

31. On October 19, 1995, plaintiff sought remedy by appeal in state court under California Code of Civil Procedure section 906 which vests in plaintiff a constitutionally protected liberty and property interest in and to a right of appeal from two orders in the same action involving the defendants, all of whom were at all relevant times engaged together and connected by law in the statutory scheme alleged as unconstitutional and the

proximate cause of the tort injuries against plaintiff for which an independent state judicial remedy was being sought.

32. That no state court at any level has afforded plaintiff his vested right of appeal under CCP section 906, after notice of appeal was timely filed under Rule 2(a) (2) of the California Rules of Court, depriving plaintiff of a constitutionally protected interest in his statutory right of appeal without due process of law, in violation of CCP section 906, Rule 2(a)(2) CRC, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Count III

33. That the omission of adjudication of the constitutional challenge presented in the underlying state

tort action, and the omission of the statutory appeal to which plaintiff is constitutionally entitled under state law and the Due Process Clause, deprived plaintiff of his substantive right of access to state court for redress of his grievances in violation of the First and Fourteenth Amendments to the United States Constitution.

IRREPARABLE HARM AND INJURY

34. Plaintiff has suffered great and immediate irreparable harm and injury and is immediately in danger of suffering further irreparable harm and injury by the deprivation of a judicial remedy in state court as a proximate result of the omissions and violations alleged herein, in that his underlying state tort action, case number BC118804, is currently undetermined, and remains so awaiting federal relief.

EXHAUSTION OF STATE REMEDIES

35. Plaintiff exhausted all possible state remedies through to the Title 28 U.S.C. section 1257 petition to the U.S. Supreme Court, which petition was denied January 12, 1998. (Exhibit G), thus ending any possibility of receiving a state remedy in case number BC118804 (Exhibit A).

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NECESSITY OF INJUNCTIVE RELIEF

36. Plaintiff is forever deprived of access to state court for redress of his grievances alleged in the underlying state action, No. BC118804.

PRAYER

WHEREFORE, plaintiff prays for injunctive relief as follows:

(1) A determination of the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to plaintiff (Exhibit B), the question not having been determined by state court at any level in the underlying state action.

(2) That plaintiff be afforded the process constitutionally due in the underlying state action, to wit, an appeal from the final appealable order of August 24, 1995, including the intermediate order of March 17, 1995, both listed on the notice of appeal, pursuant to California Code of Civil Procedure section 906.

(3) For costs of suit herein and for such other and further relief as this court deems proper.

Dated: January 30, 1998

/s/_____
RONALD BRANSON, Plaintiff

----------8----------

(Exhibit A to the Complaint)

RONALD BRANSON
10853 White Oak Ave.
Granada Hills CA 91344
Msg.phone (818) 446-8356

ORIGINAL FILED
DEC 27 1994
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(CENTRAL DISTRICT)

RONALD BRANSON, Plaintiff,

Case No. BC118804

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); ROBERT R. YATES, General Manager LADOT; LOCKHEED INFORMATION MANAGEMENT SERVICES COMPANY (LIMSC); MATTHEW SILVERMAN, Senior Vice President LIMSC; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); FRANK S. ZOLIN, Director DMV; DOES I through XX, inclusive,	COMPLAINT FOR DAMAGES FOR TORT LIABILITY; DEMAND FOR JURY TRIAL (Art.I, Sec.7(a) California Constitution; CC §§1708; 3333; GC §§815.2; 815.4; 815.6)

Defendants.

Plaintiff alleges:

PARTIES

1. Plaintiff is, and at all times herein mentioned has been, a domicile of the State of California, County of Los Angeles, and a natural born citizen of the United States of America, being endowed by God with certain unalienable rights,

CHALLENGE OF CONSTITUTIONALITY

41. (a) Plaintiff challenges the constitutionality of Article 3 of Division 17, Chapter 1, of the Vehicle Code, consisting of Sections 40200 through 40230, on its face and as applied to plaintiff, as well as any laws, codes, rules and regulations in reliance thereon. The

statutory scheme ***on its face*** indicates that the issuing agency would refuse to afford a vehicle owner a hearing on the issue of liability for the violation. The statutory scheme not only fails to provide for the opportunity to be heard on liability/culpability, but fails to provide for pre-deprivation notice as well; it fails to provide a rational way to correct the evil at hand, i.e., the alleged parking violation.

(b) The words "enforcement of penalties" indicates legislative intent that the hearing under Article 3 applies only to post-deprivation process (penalty based on ***predisposed guilt/liability***), "administrative review" being part of that post-deprivation process and falling beyond the scope of due process of law for Vehicle Code violations established by the courts. Accordingly, said statutory scheme is an unlawful bill of attainder, in violation of Article I, Section 9 of the California Constitution, as well as in violation of due process under Article I, Section 7(a) of said Constitution.

(c) Plaintiff likewise challenges the constitutionality of municipal codes of defendant CITY OF LOS ANGELES relying on said statutory scheme for implementation, including those applied against plaintiff herein.

----------10----------

(Exhibit C to the Complaint)

RONALD BRANSON
10853 White Oak Ave.
Granada Hills CA 91344
(818) 446-8356

ORIGINAL FILED
OCT 19 1995
LOS ANGELES
SUPERIOR COURT

RONALD BRANSON, Plaintiff
In Propria Persona

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

RONALD BRANSON,
Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); ROBERT R. YATES, General Manager LADOT; LOCKHEED INFORMATION MANAGEMENT SERVICES COMPANY (LIMSC); MATTHEW SILVERMAN, Senior Vice President LIMSC; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); FRANK S. ZOLIN, Director DMV; DOES I through XX, inclusive,

Defendants.

No. BC118804

NOTICE OF APPEAL

(Rule 1 C.R.C.)

PLEASE TAKE NOTICE that plaintiff RONALD BRANSON appeals to the Court of Appeals of the State of California, Second Appellate District, from the court action taken by Superior Court Judge Gregory C. O'Brien, as follows:

1) "Order of Dismissal" filed March 17, 1995;
2) "Dismissal Pursuant to CCP §581(f)(1)" filed August 24, 1995.

Dated: October 19, 1995

/s/_____
RONALD BRANSON, Plaintiff

EXHIBIT C

----------11----------

(Exhibit D to the Complaint- 2 pages)

[The actual exhibit is a photocopy of the page containing §904.1 CCP (pg.1) and of the page containing §906 CCP (pg.2)]

§901. ...
§902. ...
§903. ...
§904. ...
§904.1. **Appeal From Superior Court.**

As appeal may be taken from a superior court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, other than as provided in subdivisions (h) and (I), (2) a judgment of contempt which is made final and conclusive by section 1222, (3) a judgment on appeal from a municipal court or a justice court or a small claims court, or (4) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal court or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for

issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(d) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(e) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(f) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(g) From an order appointing a receiver.

(h) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(i) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(j) From an order made appealable by the provisions of the Probate Code or the Family Law Act, Part 5 (commencing with Section 4000).

(k) From a superior court judgment directing payment of monetary sanctions by a party or an attorney for a party only if the amount exceeds seven hundred fifty dollars ($750). Lesser sanction judgments against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the

main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.
Leg.H. 1968 ch. 385, 1969 ch. 1611, operative July 1, 1970, 1971 ch. 1210, 1978 ch. 395, effective July 11, 1978, 1982 chs. 931, 1198 §63.2, operative July 1, 1983, 1983 ch. 1159, operative July 1, 1984, 1984 ch. 29, 1988 chs. 678, 1199, 1447, 1989 ch. 1416.

Ref.: Cal. Fms Pl. & Pr. "Appeal," "Attachment," "Demurrers," "Dissolution of marriage (Pts I, III)"; W. Cal. Pro., "Actions" §720, "Provisional Remedies" §§191, 362.

EXHIBIT D (p.1)

----------12----------

[§904.2] (c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

Leg.H. ...

§904.3. ...

§904.4. ...

§904.5. ...

§905. ...

§906. **Powers of Reviewing Court.**

Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party, including, on any appeal from the judgment, any order on motion for a new trial, and may affirm, reverse or modify any judgment or order appealed from and may direct the proper judgment or order to be entered, and may, if necessary or proper, direct a new trial or further

proceedings to be had. The respondent, or party in whose favor the judgment was given may, without appealing from such judgment, request the reviewing court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken. The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken. **Leg.H.** 1968 ch. 385, 1976 ch. 1288.

Ref.: Cal. Fms Pl. & Pr., "Appeal," "Stipulations."

§907. ...

§908. ...

D (p.2)

----------13----------

(Exhibit E to the Complaint- 3 pages)

DANIEL E. LUNGREN
Attorney General of the
State of California
LAURA LEE GOLD,
(State Bar No. 070982)
Deputy Attorney General
JUNG D. SHIN, (State
Bar No. 156491)
Deputy Attorney General
300 South Spring Street
Fifth Floor
Los Angeles, California
90013-1204
Telephone: (213) 897-5882

Attorneys for Defendant State of California (erroneously sued as Department of Motor Vehicles and Director of DMV)

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RONALD BRANSON, Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION; ROBERT R. YATES; LOCKHEED INFORMATION MANAGEMENT SERVICES COMPANY; MATTHEW SILVERMAN; DEPARTMENT OF MOTOR VEHICLES; FRANK ZOLIN, DIRECTOR OF DMV; DOES 1 through 20, Inclusive,

Defendants.

Case No. BC 118804

NOTICE OF ENTRY OF JUDGMENT

TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 24, 1995, the court entered a judgment on the above-noted case dismissing the

///

///

///

the *[sic]* action as against the State of California. Attached is a copy of the dismissal.

Dated: August 29, 1995

DANIEL E. LUNGREN
Attorney General of the
State of California
JUNG D. SHIN,
Deputy Attorney General

By: /s/_____
JUNG D. SHIN
Attorneys for Defendant State of California (also erroneously sued as Department Motor Vehicles)

c:\wp\bransonnot.dis

DECLARATION OF SERVICE BY MAIL

Re: RONALD BRANSON v. STATE OF CALIFORNIA, et al.

No. Los Angeles Superior Court No. BC 118804

I, NANCI GAYTON, declare:

I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Los Angeles, California 90013, in the County of Los Angeles.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General

is deposited with the United States Postal Service that same day in the ordinary courase of business.

On August 29, 1995 at my place of business, at Los Angeles, California, the attached

NOTICE OF ENTRY OF JUDGMENT

was placed for collection and deposit in the United States Postal Service at the Office of the Attorney General, 300 South Spring Street, Los Angeles, California 90013, in a sealed envelope, postage fully prepaid, addressed to:

RONALD BRANSON
10853 WHITE OAK AVE.
GRANADA HILLS, CALIFORNIA 91344

and that envelope was placed for mailing on that date following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed at Los Angeles, California, on August 29, 1995.

/s/_____
NANCI GAYTON, Declarant

E (p.3)

----------16----------

(Exhibit F to the Complaint)

[The actual exhibit is a photocopy of the page containing Rule 2(a)(2) and Rule 2(d) CRC]

[RULE 1.] (d) ...

(e) ...

(f) ...

RULE 2. TIME OF FILING NOTICE OF APPEAL.

(A) [Normal time] Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment. For the purposes of this subdivision, a file-stamped copy of the judgment may be used in place of the document entitled "notice of entry".

(b) ...

(c) ...

(d) [Appealable order] As used in subdivision (a) and (c) of this rule, "judgment" means "appealable order" if the appeal is from an appealable order.

As amended eff. Jan. 1, 1951; Sept. 17, 1965; Dec. 1, 1967; Jan. 1, 1976; Jan. 1, 1982; Sept. 22, 1982; Jan. 1, 1986; Jan. 1, 1990; July 1, 1992.

RULE 2.5 ...

EXHIBIT F

----------17----------

(Exhibit G to the Complaint)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 12, 1998

Mr. Ronald Branson
10853 White Oak Avenue

Granada Hills, CA 91344

Re: Ronald Branson
v. City of Los Angeles, et al.
No. 97-6658

Dear Mr. Branson:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
/s/
William K. Suter, Clerk

EXHIBIT G

----------18----------

(Verification of the Complaint)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned declare: I am the plaintiff in the above entitled action; I have read the foregoing COMPLAINT FOR PROSPECTIVE INJUNCTIVE RELIEF and know the contents thereof; and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I certify (or declare) under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 30, 1998 /s/ _____
RONALD BRANSON

THE AMENDED COMPLAINT

RONALD BRANSON
10853 White Oak Ave.
Granada Hills, Calif. 91344
(626) 446-8356
Plaintiff, Pro Se

L O D G E D
98 MAY 26 PM 4:20
CLERK, U.S. DIST. CT.
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD BRANSON,
Plaintiff,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President LIMSC; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); SALLY REID, Director DMV; ORVILLE A. ARMSTRONG, personal capacity; MARGARET M. GRIGNON, personal capacity; RAMONA G. PEREZ,

No.CV 98-0778 TJH (AJWx)

P R O P O S E D

FIRST AMENDED COMPLAINT FOR PROSPECTIVE INJUNCTIVE RELIEF FOR WANT OF A STATE COURT REMEDY (*"Parratt"* violation); CHALLENGE OF CONSTITUTIONALITY OF STATE STATUTE.

[Lodged with motion to alter or amend judgment and request to file first amended complaint]

personal capacity; and
PAUL A. TURNER,
personal capacity,

Defendants.

(Title 42 U.S.C. §1983)

DATE: June 22, 1998
(submission)
PLACE: Courtroom 17

Plaintiff alleges:

---------- 1 ----------

JURISDICTION

1. The original jurisdiction of the federal District Court is invoked under Title 28 U.S.C. §1343(a)(3), as well as §1331 federal-question jurisdiction, arising under the Fourteenth Amendment, United States Constitution.

PARTIES

2. At all times herein mentioned, plaintiff was, and now is, a resident of the State of California, County of Los Angeles, within the venue and jurisdiction of the Central District of California, and a natural born citizen of the United States.

3. Defendant CITY OF LOS ANGELES ("CITY") is, and at all relevant times was, a municipal corporation duly organized and existing by virtue of its Charter, Code, Ordinances, Rules and Regulations, authorized by the California Constitution and County of Los Angeles, and at all relevant times in the underlying state action was not acting as an independent municipal entity but rather strictly as a statutory delegate and issuing agency of co-defendant CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ("DMV") under the express authority of the California Vehicle Code.

4. Defendant LOS ANGELES DEPARTMENT OF TRANSPORTATION ("LADOT") is, and at all

relevant times in the underlying state action was, a component department of co-defendant CITY created to function as and to provide a single CITY government focal point for the operation of the CITY's ground transportation activities. LADOT, in implementing the CITY's parking enforcement activities, entered into a contract with co-defendant LOCKHEED MARTIN IMS CORPORATION ("LIMSC"), formerly known as "Lockheed Information Management Services Company," to operate the CITY's "Parking Violations Bureau."

5. Defendant THOMAS CONNER is the current General Manager of co-defendant LADOT, replacing Robert R. Yates formerly in said position at the time of the underlying state action, who is responsible for the enforcement of parking regulations on behalf of co-defendant CITY.

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6. Defendant LOCKHEED MARTIN IMS CORPORATION ("LIMSC"), formerly known as "Lockheed Information Management Services Company", as aforesaid, is a New York corporation and wholly owned subsidiary of its parent company, Lockheed Martin Corporation, and a private vendor engaged in the business of processing parking citations in the name of co-defendant CITY by operating under contract the CITY's "Parking Violations Bureau."

7. Defendant EDWARD AVILA is the current Western Region Senior Vice President of co-defendant LIMSC, replacing Matthew Silverman formerly in said position at the time of the underlying state action, having general responsibility for, and oversight of, the activities of said "Parking Violations Bureau" of co-defendant CITY.

8. Defendant CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ("DMV") is, and at all relevant times in the underlying state action was, a component department within the Government of the State of California under the Business, Transportation and Housing Agency, and the principal entity administering and enforcing provisions of the California Vehicle Code, delegating its statutory authority to co-defendant CITY for implementation within its local jurisdiction as provided by said Code, and operating under the direction and control of the Director of Motor Vehicles.

9. Defendant SALLY REID is the current Director of Motor Vehicles, replacing Frank S. Zolin formerly holding that position at the time of the underlying state action, having statutory control over the operations of co-defendant DMV and charged with the responsibility of the administration and enforcement of the provisions of the California Vehicle Code and all other laws regulating the function of co-defendant DMV.

10. Defendants ORVILLE A. ARMSTRONG, MARGARET M. GRIGNON, RAMONA G. PEREZ, and PAUL A. TURNER are each sued herein only in his/her personal capacity within the meaning of Hafer v. Melo (1991) 112 S.Ct. 358 for acts of omission under color of state law while each was carrying a badge of authority as a justice of the California Court of Appeal, Second Appellate District, Division Five, to which

plaintiff's underlying state appeal was assigned, said defendants having violated plaintiff's constitutionally protected right to statutory appellate due process precisely because they were each in the position of carrying such authority.

RELIEF SOUGHT

11. Plaintiff seeks prospective injunctive relief in federal court under Title 42 U.S.C. §1983 due to the deprivation of a state court remedy without due process of law in his underlying state tort action, Los Angeles Superior Court case number BC118804, after exhausting all possible state legal remedies through the §1257 appeal sought in the U.S. Supreme Court, No. 97-6658. The state court system (1) failed to adjudicate plaintiff's constitutional challenge of California Vehicle Code sections 40200 through 40230; (2) failed to provide an appeal to which plaintiff was constitutionally entitled according to the subject matter of his notice of appeal filed October 19, 1995; and (3) thus failed to provide constitutional access to state court for redress of plaintiff's grievances.

BACKGROUND

12. On December 27, 1994, plaintiff filed a state tort action against the defendants. (Exhibit A - face sheet of state complaint identifying the action).

13. In the underlying state complaint, plaintiff challenged the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to plaintiff, as well as any laws, codes, rules and regulations in reliance thereon. A copy of that challenge as presented in the underlying state action is attached hereto as Exhibit B.

14. On October 19, 1995, plaintiff filed a notice of appeal from two orders in said tort action. (Exhibit C showing the subject matter for appeal as ***two orders*** in said action).

15. Under California law, the process due plaintiff for an appeal from the two orders indicated in the notice of appeal is established by California Code of

Civil Procedure ("CCP") section 906 which provides that upon invoking an appeal from a final order

pursuant to section 904.1, the appellate court will review the interlocutory order included in the notice of appeal as well as the final order. A copy of CCP sections 904.1 and 906 is attached as Exhibit D for reference.

16. The notice of appeal (Exhibit C) indicates that the intermediate (interlocutory) order was filed March 17, 1995, and the final order was filed August 24, 1995.

17. Under the one final judgment rule, universally recognized in every state, including California, the final order of August 24, 1995 is the only appealable order in plaintiff's underlying state tort action, No. BC118804, from which an appeal could be taken under CCP section 904.1.

18. Plaintiff, having noticed the appeal from the final order under CCP section 904.1, is statutorily and constitutionally entitled to appellate review of the intermediate order under CCP section 906 "upon [the] appeal pursuant to section 904.1." (Exhibit D).

19. A notice of entry of judgment was served on August 29, 1995 by a party to the underlying action upon plaintiff. (Exhibit E identifying the document and service).

20. The notice of appeal (Exhibit C) was filed by plaintiff October 19, 1995.

21. The timeliness of the notice of appeal is governed by Rule 2(a) California Rules of Court which provides "Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a

document entitled "notice of entry" of judgment; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment. ... " A copy of Rule 2(a) CRC is attached as Exhibit F for reference.

22. The word "judgment" used in Rule 2(a) means "appealable order" as provided by Rule 2(d) CRC, a copy of which is included in Exhibit F for reference.

23. In plaintiff's underlying state action, the word "judgment" in Rule 2(a) means the order filed August 24, 1995, the only "appealable order" in case number BC118804.

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24. Under the facts of plaintiff's underlying state action, the applicable portion of Rule 2(a), quoted above, determining the timeliness of plaintiff's notice of appeal is sub-part (2), "on or before 60 days after the date of service of... 'notice of entry' of judgment by any party upon the party filing the notice of appeal." (Exhibit F).

25. The notice of entry of judgment was served by a party upon plaintiff on August 29, 1995 (Exhibit E), and plaintiff filed the notice of appeal on October 19, 1995 (Exhibit C), "before 60 days (51 days) after the date of service of notice of entry of judgment."

26. The notice of appeal (Exhibit C) was timely filed under Rule 2(a) sub-part (2) of the California Rules of Court. (Exhibit F).

27. No appeal on the subject matter of the notice of appeal (Exhibit C) under Code of Civil Procedure section 906 (Exhibit D) was ever afforded plaintiff in state court at any time, or at any level.

28. No adjudication of the constitutional challenge of Vehicle Code sections 40200 through 40230, presented in the complaint at the inception of the state tort action (Exhibit B), was made by state court at any time, at any level.

29. No access to state court for redress of plaintiff's grievances as presented in the underlying independent tort action was given by state court at any time, at any level.

VIOLATIONS REQUIRING FEDERAL INJUNCTIVE RELIEF

Count I

30. On December 27, 1994, plaintiff filed a post-deprivation tort action at law in state court, independently from outside the administrative forum, challenging the constitutionality of California Vehicle Code sections 40200 through 40230, claiming the procedures promulgated under said statutory scheme are the very source of the alleged tort injuries for which plaintiff was seeking an independent judicial remedy in state court.

31. Defendants CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION; THOMAS CONNER; LOCKHEED MARTIN IMS CORPORA-

TION; EDWARD AVILA; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES; and SALLY REID are the defendants (or official replacements where applicable) named in the underlying state tort action, each of whom is responsible in some manner for the injuries to plaintiff therein alleged proximately caused by the implementation and enforcement of the above

unconstitutional statutory scheme. Said defendants thus have a current stake in the outcome of this controversy with plaintiff, creating the standing necessary for a determination by federal court of the constitutional question raised.

32. That no state court at any level has adjudicated this independent constitutional challenge regarding the requirement for an opportunity to be heard on liability/culpability before penalty is imposed, and for pre-deprivation notice as well. (See Exhibit B). That question remains undecided to date, said omission depriving plaintiff of a constitutionally protected interest in life, liberty, and property, without due process of law, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Count II

33. On October 19, 1995, plaintiff sought remedy by appeal in state court under California Code of Civil Procedure section 906 which vests in plaintiff a constitutionally protected liberty and property interest in and to a right of appeal from two orders in the same action involving the defendants, all of whom were at all relevant times engaged together and connected by law in the statutory scheme alleged as unconstitutional and the proximate cause of the tort injuries against plaintiff for which an independent state judicial remedy was being sought.

34. That defendants ORVILLE A. ARMSTRONG, MARGARET M. GRIGNON, RAMONA G. PEREZ, and PAUL A. TURNER, while acting under color of state law and carrying a badge of authority as justices of the state appellate court to which plaintiff's underlying state appeal was assigned, at no time afforded plaintiff his vested right of appeal under

CCP section 906, after notice of appeal was timely filed under Rule 2(a) (2)

of the California Rules of Court, depriving plaintiff of a constitutionally protected interest in his statutory right of appeal without due process of law, in violation of CCP section 906, Rule 2(a)(2) CRC, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Count III

35. That the omission under color of state law by defendants ARMSTRONG, GRIGNON, PEREZ, and TURNER of the statutory appeal to which plaintiff is constitutionally entitled under state law and the Due Process Clause, as alleged in Count II above, deprived plaintiff of his substantive right of access to state court for redress of his grievances in violation of the First and Fourteenth Amendments to the United States Constitution.

IRREPARABLE HARM AND INJURY

36. Plaintiff has suffered great and immediate irreparable harm and injury and is immediately in danger of suffering further irreparable harm and injury by the deprivation of a judicial remedy in state court as a proximate result of the omissions and violations alleged herein, in that his underlying state tort action, case number BC118804, is currently undetermined, and remains so awaiting federal relief.

EXHAUSTION OF STATE REMEDIES

37. Plaintiff exhausted all possible state remedies through to the Title 28 U.S.C. section 1257 petition to the U.S. Supreme Court, which petition was denied January 12, 1998. (Exhibit G), thus ending any

possibility of receiving a state remedy in case number BC118804 (Exhibit A).

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NECESSITY OF INJUNCTIVE RELIEF

38. Plaintiff is forever deprived of access to state court for redress of his grievances alleged in the underlying state action, No. BC118804.

PRAYER

WHEREFORE, plaintiff prays for injunctive relief as follows:

(1) A determination of the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to plaintiff (Exhibit B) ***within the scope of the question raised in state court as shown in Exhibit B,*** said question not having been determined by state court at any level in the underlying state action, an on-going case and controversy having been shown to exist between the parties involved.

(2) That plaintiff be afforded the process constitutionally due in the underlying state action, to wit, an appeal from the final appealable order of August 24, 1995, including the intermediate order of March 17, 1995, both listed on the notice of appeal, pursuant to California Code of Civil Procedure section 906.

(3) For costs of suit herein and for such other and further relief as this court deems proper.

Dated: May 26, 1998

/s/_____
RONALD BRANSON, Plaintiff

----------9----------

(The exhibits to the Amended Complaint are identical to the exhibits of the Original Complaint immediately preceding the Amended Complaint in this Appendix. To avoid unnecessary duplication, the exhibits are not repeated here.)

----------Pages 10 through 19----------

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, declare: I am the plaintiff in the above-entitled action; I have read the foregoing PROPOSED FIRST AMENDED COMPLAINT FOR PROSPECTIVE INJUNCTIVE RELIEF FOR WANT OF A STATE COURT REMEDY and CHALLENGE OF CONSTITUTIONALITY OF STATE STATUTE and know the contents thereof; and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I certify (or declare) under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 26, 1998 /s/_____

RONALD BRANSON

REPLY
TO CITY OF LOS ANGELES' APPELLEES' BRIEF
(including request for Judicial Notice)
(text only)
(This is the final brief in the appeal summing everything up. Compare this brief with the judgment of the Court of Appeals)

Introduction

NOTICE

TO: THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, THE PARTIES, AND TO COUNSEL OF RECORD

PLEASE TAKE NOTICE that as of the time of filing of the City's Brief ("CB") to which this Reply is made, there is not so much as a single argument or mention of the controlling law of this case, namely, the denial of due process to the right of an appeal under California Code of Civil Procedure §906, nary a word throughout the CB or any of the previous appellees' briefs. THAT WITHOUT CONSIDERATION OF CCP §906 AND THE PROCESS DUE THEREUNDER, IT IS IMPOSSIBLE FOR THIS CASE TO BE RESOLVED. This federal suit is based on the controlling Rule of Law.

Questions before the federal court regarding the substance of this suit for injunctive relief:

1. Does CCP §906 create a statutory right, protected by the Fourteenth Amendment, to an appeal in state court? *The defendants/appellees have said nothing about this.*

2. Did plaintiff invoke CCP §906 jurisdiction? *Defendants/appellees say nothing about this.*

----------1----------

3. Was CCP §906 jurisdiction exercised by the state appellate court? *The defendants/appellees say nothing about this.*

4. If CCP §906 jurisdiction was not exercised by the state appellate court when invoked, is the deprivation thereof a proper subject of federal relief? *The defendants/ appellees have said nothing about this.*

5. If the process required under CCP §906 jurisdiction was not exercised by the state appellate court, was it possible for state court to decide the constitutional challenge of Vehicle Code §§40200-40230? *The defendants/appellees have said nothing about this.*

1. <u>Plaintiff requests judicial notice be taken of certain facts which form part of the record before this reviewing court.</u>

Pursuant to Rule 201 F.R.E., please take judicial notice of the following facts:

A. <u>Facts from the complaint (both original and amended) which must be taken as true</u>:

(1) In the underlying state complaint, plaintiff challenged the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to plaintiff, as well as any laws, codes, rules and regulations in reliance thereon. A copy of that challenge as presented in the underlying state action is attached hereto as Exhibit B. [ER-4,10,261,268].

----------2----------

(2) On October 19, 1995, plaintiff filed a notice of appeal from two orders in said tort action. (Exhibit C showing the subject matter for appeal as ***two orders*** [emph. in both complaints] in said action). [ER-4,11,261,269].

(3)[1] Under California law, the process due plaintiff for an appeal from the two orders indicated in the notice of appeal is established by California Code of Civil Procedure ("CCP") section 906 which provides that upon invoking an appeal from a final order pursuant to section 904.1, the appellate court will review the interlocutory order included in the notice of appeal as well as the final order. A copy of CCP sections 904.1 and 906 is attached as Exhibit D for reference. [ER-4,12,13,261,262,270,271].

(4) The notice of appeal (Exhibit C) indicates that the intermediate (interlocutory) order was filed March 17, 1995, and the final order was filed August 24, 1995. [ER-4,11,262,269].

---

[1] This is the substance upon which this federal suit for injunctive relief is based. Without consideration of this substantive issue, plaintiff's grievance is not redressed and nothing is resolved. So far, it has been ignored.

(5) Under the one final judgment rule, universally recognized in every state, including California, the final order of August 24, 1995 is the only appealable order in plaintiff's underlying state tort action, No. BC118804, from which an appeal could be taken under CCP section 904.1. [ER-4,262].

(6)[2] Plaintiff, having noticed the appeal from the final order under CCP section 904.1, is statutorily and constitutionally entitled to appellate review of the intermediate order under CCP section 906 "upon [the] appeal pursuant to section 904.1." (Exhibit D). [ER-5,13,262,271].

(7) A notice of entry of judgment was served on August 29, 1995 by a party to the underlying action upon plaintiff. (Exhibit E identifying the document and service). [ER-5,14,15,16,262,272, 273,274].

(8) The notice of appeal (Exhibit C) was filed by plaintiff October 19, 1995. [ER-5,11,262,269].

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[2] This item states the process to which plaintiff is due in state court, as claimed in this federal suit. Without consideration of this process, provided under state law, plaintiff's grievance is not redressed, and nothing is resolved.

(9) The timeliness of the notice of appeal is governed by Rule 2(a) California Rules of Court which provides "Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal; or (3) 180 days after the date of

entry of the judgment. ..." A copy of Rule 2(a) CRC is attached as Exhibit F for reference. [ER-5,17,262,275].

(10) The word "judgment" used in Rule 2(a) means "appealable order" as provided by Rule 2(d) CRC, a copy of which is included in Exhibit F for reference. [ER-5,17, 262,275].

(11) In plaintiff's underlying state action, the word "judgment" in Rule 2(a) means the order filed August 24, 1995, the only "appealable order" in case number BC118804. [ER-5,262,263].

(12) Under the facts of plaintiff's underlying state action, the applicable portion of Rule 2(a), quoted above, determining the timeliness of plaintiff's notice of appeal is subpart (2), "on or before 60 days after the date of service of... 'notice of entry' of judgment by any party upon the party filing the notice of appeal." (Exhibit F). [ER-5,17,263,275].

(13)[3] The notice of entry of judgment was served by a party upon plaintiff on August 29, 1995 (Exhibit E), and plaintiff filed the notice of appeal on October 19, 1995 (Exhibit C), "before 60 days (51 days) after the date of service of notice of entry of judgment." [ER-5,11,14,15,16,263,269, 272, 273,274].

(14) The notice of appeal (Exhibit C) was timely filed under Rule 2(a) sub-part (2) of the California Rules of Court. (Exhibit F). [ER-5,11,17,263,269, 275].

(15) No appeal on the subject matter of the notice of appeal (Exhibit C) under Code of Civil Procedure section 906 (Exhibit D) was ever afforded plaintiff in state court at any time, or at any level. [Emph. in both complaints]

[ER-6,11,12,13,263,269,270,271].

---

[3] This shows the invoking of Code of Civil Procedure §906 for appeal.

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(16) No adjudication of the constitutional challenge of Vehicle Code sections 40200 through 40230, presented in the complaint at the inception of the state tort action (Exhibit B), was made by state court at any time, at any level. [Emph. in both complaints] [ER-6,10,263,268].

(17) No access to state court for redress of plaintiff's grievances as presented in the underlying independent tort action was given by state court at any time, at any level. [Emph. in both complaints] [ER-6,263].

B. "Relief Sought" [4] (in both original and amended complaints):

Please take judicial notice of the following:

RELIEF SOUGHT. ...Plaintiff seeks prospective injunctive relief in federal court under Title 42 U.S.C. §1983 due to the deprivation of a state court remedy without due process of law in his underlying state tort action, Los Angeles Superior Court case number BC118804, after exhausting all possible state legal remedies through the §1257 appeal

(continued on next page)

---

[4] It is noted that according to the face of the complaint (both original and amended), plaintiff is seeking declaratory relief under Title 28 U.S.C. §2201 in Count I, and §1983 relief in Counts II and III. [See OB-4,6,7,31,32,33,45,46]

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sought in the U.S. Supreme Court, No. 97-6658. The state court system (1) failed to adjudicate plaintiff's constitutional challenge of California Vehicle Code sections 40200 through 40230; (2) failed to provide an appeal to which plaintiff was constitutionally entitled according to the subject matter of his notice of appeal filed October 19, 1995; and (3) thus failed to provide constitutional access to state court for redress of plaintiff's grievances. [ER-3,261].

C. The Prayer of both complaints:

Please take judicial notice of the following:

PRAYER [original complaint]

WHEREFORE, plaintiff prays for injunctive relief as follows: (1) A determination of the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to plaintiff (Exhibit B), the question not having been determined by state court at any level in the underlying state action. (2) That plaintiff be afforded the process constitutionally due in the underlying state action, to wit, an appeal from the final appealable order of August 24, 1995, including the intermediate order of March 17, 1995, both listed

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on the notice of appeal, pursuant to California Code of Civil Procedure section 906. (3) For costs of suit herein and for such other and further relief as this court deems proper. [ER-8,10].

PRAYER [amended complaint] [5]

WHEREFORE, plaintiff prays for injunctive relief as follows: (1) A determination of the constitutionality of California Vehicle Code sections 40200 through 40230 on its face and as applied to

plaintiff (Exhibit B) ***within the scope of the question raised in state court as shown in Exhibit B,*** [emph. in complt] said question not having been determined by state court at any level in the underlying state action, an on-going case and controversy having been shown to exist between the parties involved. (2) That plaintiff be afforded the process constitutionally due in the underlying state action, to wit, an appeal from the final appealable order of August 24, 1995, including the intermediate order of March 17, 1995, both listed on the notice of appeal, pursuant to California Code of Civil Procedure section 906. (3) For costs of suit herein and for such other and further relief as this court deems proper. [ER-266,268].

---

[5] Plaintiff stands on his position in the opening brief that as a matter of law, the amended complaint is the complaint of record before this court. [See OB-22,27,28]

2. <u>The "Statement of Facts" [CB-1,2] fails to focus on the issues of this federal suit.</u>

Comparing the facts above, of which judicial notice is requested, with the statements made throughout the CB, shows that the City appellees are skirting the issues of the federal complaint for injunctive relief, as are all appellees herein. The federal court is not to review what happened in state court, as the City is urging by its presentation; and everything in the Supplemental Volume of ER comprising wholly of proceedings in state court, to which the City frequently refers, is irrelevant to the issues here. [OB-13,25,39,47, 51,54,56].

3. <u>The City misrepresents to this court the relief plaintiff is seeking in district court.</u>

> What Plaintiff/Appellant was seeking in this action was prospective injunctive relief asking the court to determine (1) the constitutionality of California Vehicle Code §§ 40200 through 40230, and (2) to hear his appeal that the State Court of Appeal had dismissed as having been untimely filed. [CB-2]

Compare that statement by the City appellees with the "Relief Sought" [1-B *ante*] and the "Prayer" of both complaints (original and amended) [1-C *ante*] of which plaintiff requests judicial notice be taken.

<u>Regarding the state appeal</u>, the Prayer in both federal complaints states "that plaintiff be afforded the process constitutionally due in the underlying state action, to wit, an appeal from the final appealable order of August 24, 1995, including the intermediate order of

March 17, 1995, both listed on the notice of appeal, pursuant to California Code of Civil Procedure section 906" [ER8,266].

That request for relief cannot be interpreted as asking the federal court "to hear his appeal that the state court... had dismissed..." [CB-2]. The record shows that the state appeal described in Item (2) of the Prayer does not exist-- it was never provided, so there is nothing "to hear" pursuant to the relief requested. Plaintiff is requesting the process that is due in state court, but was never given. The substantive state law is Code of Civil Procedure section 906, and state appellate jurisdiction thereunder was never exercised. CCP §906 is the state remedy that was available in theory, <u>but not in practice</u>.

> The third aim [of now §1983] was to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice. *Monroe v. Pape* (1961) 365 U.S. 167, 174. [OB-35]. As was noted in *Monroe*, in many cases there is "no quarrel with the state laws on the books," *id.* at 176; instead, the problem is the way those laws are or are not implemented by state officials.
>
> *Zinermon v. Burch* (1990) 494 U.S. 113, 125. [OB-35].

At no time does the appellee City, nor any appellee herein, discuss the process due under CCP §906, despite that being the substance of this federal suit. The City's conclusion that "plaintiff/appellant's complaint was directed at overturning the decision of the state trial court and appeal courts on those same issues" [CB-3] is made in bad faith, is not supported by the record, is fraudulent and prejudicial to plaintiff, and for which sanctions should be imposed

against counsel for the City appellees.

Regarding the constitutional challenge of Vehicle Code §§40200-40230, that issue was presented on state appeal, but state determination thereof was foreclosed by the deprivation of the state remedy statutorily and constitutionally due. [OB-4,14,17,24,32,37]. The scope of the constitutional question as shown in Exhibit B of the Complaint [ER10:10-12, 268:10-12] was never addressed and remains undecided to date. [OB-37,38].

4. <u>The City's brief is further proof of the necessity of converting the 12(b) motions into ones for summary judgment as required by law.</u>

Based on the above, including the facts and portions of the complaints of which judicial notice is requested (Heading #1 *ante*), and a general review of the City's brief as a whole (particularly pages 5 through 9 discussing state court proceedings which are irrelevant here), the evidence shows how off base the City's brief is to this federal suit. They do not coincide factually on substantive issues. Plaintiff already stated on this record and has shown by evidence that "the principles of *Branson v. Nott* do not apply to the facts of this case [ER-85-86]" [OB-11]. Defendants/appellees will continue to argue "state court proceedings" *ad infinitum* until that argument is tested by the substantive law claimed in this federal suit. The Rules <u>require</u> that it be done. Plaintiff's opening brief states the following:

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> Two material allegations are: (1) "That no state court at any level has adjudicated this independent constitutional challenge regarding the requirement for an opportunity to be heard on liability/culpability before penalty is imposed, and for pre-deprivation notice as well." [ER-264]; and (2) "That defendants (named), while acting under color of state law and carrying a badge of authority as justices of the state appellate court to which plaintiff's underlying state appeal was assigned, at no time afforded plaintiff his vested

> right of appeal under CCP section 906, after notice of appeal was timely filed under Rule 2(a)(2)...." [ER-264]. Not only must these material allegations be accepted as true and construed in favor of plaintiff, but the court must also construe any "overriding evidence" produced by defendants as that which is material, i.e., as accounting for the substantive law or issue(see above) alleged in the complaint. Until that is done, this case is not being redressed in federal court. [OB-41-42]

Plaintiff stands on his argument [OB-48-49] that the court was required to treat the 12(b) motions as ones for summary judgment under Rule 56 procedure. Only in that way will the material facts of this case be brought into focus for proper adjudication. Defendants/ appellees must bear the burden in the first instance regarding summary judgment. Until that is done, each side will argue in vain its own version of the substance of this case.

> Unless such a motion [12(b)] is converted into one for summary judgment, "it does not challenge the actual existence of a meritorious claim." 10A Wright, Miller & Kane, Fed. Prac. & Proc. (1998) Civil 3d §2713 p.221. [OB-49]

5. <u>Plaintiff stands on his argument that as a matter of law, the amended complaint is the complaint of record before the court [OB-27,28].</u>

The portion omitted by ellipses ("...") at CB-4, at line 4, is the following:

> Plaintiff presented in his reply to opposition to his motion for summary judgment the reasons for not naming the justices in the original complaint, citing the cases upon which he relied. [ER-206-208]. Plaintiff concluded by stating that, if the court determined that the judicial officers would be the correct defendants for the §1983 claims alleged, he be granted an opportunity to amend the complaint to make that correction. [ER-208]. Also, plaintiff's declaration ends by stating that he is prepared to amend as the court deems necessary to obtain the relief sought. [ER-209]. Plaintiff was relying on the court to determine if amendment was necessary, not then realizing that he could amend without leave of court as a matter of course under Rule 15(a). [OB-6]

That portion, omitted from the City's brief, shows that plaintiff did place the court and all counsel of record on notice of his request that "he (plaintiff) be granted an opportunity to amend the complaint to [name the correct defendants for the §1983 claims alleged]" [ER-208; OB-6] and "that [plaintiff] is prepared to amend as the court deems necessary to obtain the relief sought." [ER-209; OB-6]. These statements regarding amendment were

made by plaintiff prior to the order of dismissal. [ER-208,209 (April 9, 1998); ER-246 (May 7, 1998)].

After fraudulently omitting the material portion of the record regarding plaintiff's statements regarding amending the complaint made prior to the court's dismissal, counsel

for the City appellees makes the following conclusion based on its fraud of omission:

> It was not until after the District Court's dismissal of that original Complaint pursuant to the various defendants' motions *[which were to have been converted into ones for summary judgment- RB]* that Plaintiff/Appellant attempted to file his First Amended Complaint.... [CB-4]

That false statement ignores what plaintiff stated in his opening brief at page 27, to wit, "[P]rior to the May 7th order [of dismissal] plaintiff placed the court and parties on notice that he 'respectfully requests opportunity to amend' the complaint.... [ER-208]", then citing:

> Defendants had filed no answer or other pleading prior to entry of the order dismissing the action. In their memorandum briefs filed in the district court, plaintiffs indicated that they wished to file an amended complaint. ¶It therefore appears that plaintiffs had the right to amend the complaint as a matter of course, which right was denied to them.... On plaintiff's appeal the order is reversed so that an amended

complaint may be filed.
O.C. Nolen v. Fitzharris (9th Cir. 1971) 450 F.2d 958, 959. [OB-28]

The determining factor is "Defendants had filed no answer or other pleading prior to entry of the order dismissing the action." Such is the case here. The City overlooks *Nolen*.

Even more blatantly, the City disregards the ***right*** created under Rule 15(a) F.R.Civ.P., even when acknowledging the pages of the opening brief where that right is discussed and supported by authority, by stating:

> Notwithstanding that denial, Plaintiff/Appellant argues his case (Brief of Appellant, page 22 and pages 27-29) as if that rejected First Amended Complaint were the operative pleading on file, which, of course, it is not. [CB-4]

At those pages, especially OB-27-29, plaintiff cited [OB-27] *Schreiber Distributing v. Serv-Well Furn. Co.* (9th Cir.1986) 806 F.2d 1393, 1401, quoting from *Breier v. Northern California Bowling Proprietors' Assn.* (9th Cir.1963) 316 F.2d 787 which case states:

> Judgment was then entered denying leave to file amended complaints and dismissing the actions. ¶We think appellants were entitled to file amended complaints as a matter of right. *[How does the City conclude "which, of course, it is not" after this Ninth Circuit ruling? -RB]* "A party may amend his pleading once as a matter of course at any time before a respon-

> sive pleading is served...." Rule 15(a) F.R.Civ.P. A motion to dismiss is not a "responsive pleading" within the meaning of the Rule. Neither the filing nor granting of such a motion before answer terminates the right to amend; an order of dismissal denying leave to amend at that stage of proceeding is improper, and a motion for leave to amend (though unnecessary) must be granted if filed. [several citations]. *Breier, supra,* at 789.

Based on *Breier* alone, the City's statement at CB-4, quoted above, is completely unfounded. The City cites no authority for its conclusion "which, of course, it is not" referring to the "First Amended Complaint [being] the operative pleading on file." The Ninth Circuit has ruled that it **is** if no responsive pleading is served; that "dismissal denying leave to amend at that stage of proceeding is improper". Sanctions should be imposed on counsel for making such an irresponsible and prejudicial statement, disregarding plainly cited authority to the contrary.

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6. Counsel for the City presented its "Appellees' Brief" in bad faith.

After making all the false and fraudulent statements in its brief, very prejudicial and damaging to plaintiff, not once did the City argue the merits of the substantive federal claim presented in this case. Their brief shows no "reasonable inquiry" or "examination into the facts and legal research which is reasonable under the circumstances of the case" as set forth in *Zaldivar v. City of Los Angeles* (9th Cir.1986) 780 F.2d

823, 831, for which sanctions were imposed. The "circumstances of this case" are not addressed, nor does the City, or any appellee herein, have a defense to the issues before this court.

Dated: January 20, 1999

/s/_____

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Statement of Petitioner

In petitioner's judgment, several material points of fact and law have been overlooked in the decision filed June 17, 1999. Those points are clearly stated below:

A. Judicial notice of the facts taken from the complaint is *mandatory*.

The Memorandum decision, at the bottom of page 3, arbitrarily denies petitioner's request for judicial notice of facts taken from the complaint. However, under federal rules, such judicial notice must be taken.

> A court shall take judicial notice if requested by a party and supplied with the necessary information.
> (Federal Rules of Evid. 201(d))

The denial of mandatory judicial notice as requested by petitioner has caused the following points of fact and law to be overlooked in the decision.

(1) Material points of fact overlooked in the decision:

1. Petitioner filed in state court a notice of appeal indicating a single appeal from two superior court orders in the same state action. [Evidence: ER 11, 269]

2. Said notice of appeal shows on its face that the first order listed was filed March 17, 1995, and the second order listed was filed August 24, 1995. [Evidence: ER 11, 269]

3. California has a law on the books allowing an appeal to be taken from a superior court order that is final in that court. That law is §904.1 subd.(a)(1) of the Code of Civil Procedure. [Evidence: ER 12, 270]

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4. California has a law on the books allowing appellate review of an intermediate trial court order upon a timely appeal taken from the final order in the same action. That law is §906 of the Code of Civil Procedure. [Evidence: ER 13, 271]

5. The notice of appeal (Exhibit C to the complaint) shows that the final order in the state action is the one filed August 24, 1995. [Evidence: ER 11, 269]

6. A notice of entry of judgment, referring to the order filed August 24, 1995, was served upon petitioner on August 29, 1995, by counsel for the California Department of Motor Vehicles. [Evidence: ER 14, 15, 16, 272, 273, 274].

7. The California Department of Motor Vehicles is a party in the underlying state action. [Evidence: ER 9, 267]

8. California has a law on the books setting forth the time of filing a notice of appeal. That law is Rule 2 of the California Rules of Court, Appellate Rules. [Evidence: ER 17, 275]

9. The record does not show any mailing by the clerk of notice of entry of judgment.

10. Rule 2(a)(2) shows that a notice of appeal in California shall be filed on or before 60 days after the date of service of notice of entry of judgment by a party upon the state appellant. [Evidence: ER 17, 275].

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11. Petitioner's notice of appeal in state court was filed October 19, 1995, which is 51 days after the date of service on him of the notice of entry of judgment by a party. [Evidence: ER 11, 269, 16, 274]

12. The substantive law claimed by petitioner in the federal complaint is California Code of Civil

Procedure §906 and Rule 2(a)(2) of the California Rules of Court. [Evidence: ER 6:23- 7:8; 264:16 - 265:4]

13. The prayer of the federal complaint requests that petitioner be afforded a state appeal from the final order dated August 24, 1995, to include appellate review of the intermediate order of March 17, 1995, pursuant to §906 of the California Code of Civil Procedure. [Evidence: ER 8:10-13; 266: 12-15].

14. Petitioner challenged the constitutionality of §§40200 through 40230 of the California Vehicle Code in the underlying state action on the ground that it fails to provide for a hearing on the issue of liability before imposing penalty, nor does it provide pre-deprivation notice. [Evidence: ER 10: 3-12; 268: 3-12].

15. The prayer of the federal complaint requests that the above constitutional question be determined by the federal court since it was not determined in state court. [Evidence: ER 8:7-9; stated more precisely at ER 266:7-11].

16. The record does not show any evidence of the above constitutional question

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being decided by any court.

(2) <u>Material points of law overlooked in the decision:</u>

1. Overlooked is the process of law that was due in state court according to the material facts stated above and supported by the record.

2. Overlooked is petitioner's statutory right to a particular type of state appeal authorized by state law, protected by the Fourteenth Amendment, according to the material facts stated and supported by the record.

3. Overlooked is the relevance and applicability of California Code of Civil Procedure §906 to the material facts shown and supported by the record.

4 Overlooked is the relevance and applicability of Rule 2(a)(2) California Rules of Court to the material facts shown and supported by the record.

5. Overlooked is petitioner's invoking of statutory appellate jurisdiction in state court according to the material facts shown and supported by the record.

6. Overlooked is the relevance and applicability of declaratory relief to petitioner according to the material facts shown relating to that subject and supported by the record.

B. <u>The Memorandum decision filed June 17, 1999, is not supported by the record.</u>

At the middle of page 2 of the decision, the court states

> Because Branson's action is an impermissible collateral attack against a prior state court judgment, the district court lacked

> subject matter jurisdiction and properly dismissed his section 1983 action. (citing *Branson v. Nott* 62 F.3d 287, 291-92).

The court also stated "We may affirm the district court's decision on any basis **<u>which the record supports.</u>**" (also *Branson v. Nott*). [Emph. added].

The court's finding that the action "is an impermissible collateral attack against a prior state court judgment" shows **<u>no</u>** supporting evidence from the record. Therefore, there is no basis on which the court "may affirm the district court's decision." Unlike

Branson v. Nott, the Memorandum decision here fails to identify from the record (a) the "prior state court judgment" to which it refers; (b) the issues that were decided thereby, and (c) how it was collaterally attacked by this federal suit. Consequently, the conclusion that "the district court lacked subject matter jurisdiction and properly dismissed [the] section 1983 action" is unfounded.

Based on that unfounded conclusion, the decision (1) affirmed dismissal of the §1983 action without any discussion of the declaratory relief portion; (2) denied the amendment of the complaint as "futile"; (3) affirmed the taxing of costs; and (4) affirmed the sua sponte order of sanctions "because the record indicates **[no references shown]** that Branson's action was a frivolous and impermissible collateral attack against a prior state court judgment." There is no showing how Rule 11 F.R.Civ.P. authorizes sanctions against petitioner.

Therefore, those four dispositions have no basis in fact or law according to the

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record. Besides the denial of redress in federal court caused by this unfounded decision, any attempted exaction of monies from petitioner based thereon would be illegal. Petitioner continues to face the ongoing injury of being unable to register a vehicle in California (a life sentence without hearing), with resolution now being unjustly blocked.

C. <u>There is no support from the record that petitioner's 59(e) motion involved "reconsideration" of anything.</u>

At the bottom of page 2 of the decision, the court affirms the denial of the 59(e) motion, citing *School Dist. No. 1J, Multnomah County v. ACandS, Inc.* 5 F.3d

1255, 1262-63, which deals with a motion for reconsideration and the requirements for that type of motion. The court shows nothing from this record that reflects that petitioner was seeking reconsideration. Therefore, such denial is unfounded and must be corrected.

D. There is no evidence or finding that *Gabor v. Frazier* cited on page 3 of the decision is relevant here.

Gabor v. Frazier cited near bottom of page 3 of the decision is based on FRAP 38 involving a frivolous appeal. There is no finding nor evidence that this appeal is frivolous.

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CONCLUSION

Based on the above, petitioner seeks rehearing and a decision supported by the evidence as shown by the record, and based on the substantive law applicable to the material facts shown. Without judicial notice of adjudicative facts from the complaint upon which a decision supported by the evidence and substantive law applicable thereto may be made, this case remains unresolved Petitioner forever continues to be damaged and will be forced to continue seeking a remedy for redress.

Dated: June 29, 1999

/s/_____

RONALD BRANSON, Petitioner
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